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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..04..2006

CORAM

THE HON'BLE MR. A.P.SHAH, CHIEF JUSTICE
and
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

O.S.A.No.86 of 2006

1. R.Rajagopal @ R.R.Gopal
   @ Nakkheeran Gopal
2. A.Kamaraj ..Appellants/ Defendants

Vs.

1. J.Jayalalitha
2. Mrs.N.Sassikala ..Respondents. / Plaintiffs

PRAYER: Appeal against the ad interim injunction order passed by a learned single Judge of this Court dated 15.03.2006 in Original Application No.599 of 2003 in C.S.No.477 of 2003.

For Appellants :: Mr.P.T.Perumal
For Respondents :: Mr.N.Jothi

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

The first appellant, R.Rajagopal @ R.R.Gopal, is the Editor, Printer and Publisher of "Nakkheeran", a bi-weekly magazine published from Chennai. The second appellant, A.Kamaraj is the Associate Editor of "Nakkheeran". During the period from 01.04.2003 to 20.06.2003, the appellants had published certain articles in their magazine in relation to the first and the second respondents. The first respondent Selvi. J.Jayalalitha is the Chief Minister of the State of Tamil Nadu. She is also the General Secretary of the political party, All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.). The second respondent Tmt.N.Sassikala is a close friend of the first respondent and is interested in the welfare of the first respondent. In all 24 publications made in 21 issues of "Nakkheeran" are the subject matter of the present proceedings.

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2. The respondents filed a suit for injunction and damages against the appellants in their capacity as Editor, Printer and Publisher and Associate Editor of "Nakkheeran" respectively. In the plaint, it is stated that the first appellant was arrested by the police under Prevention of Terrorism Act, 2002 on 12.04.2003 and has been detained in prison ever since. From the said date, the magazine "Nakkheeran", which is being published as a bi-weekly on Tuesdays and Fridays of the week (now Thursdays and Sundays), has been carrying a vilification campaign against the respondents in their magazine by printing false and defamatory articles on the title page with banner headlines as well as on the cover page, apart from featuring the photographs of either the first or the second respondent or both. None of the articles published against the respondents has been found to be true or published in good faith after prior verification. In fact, the first appellant has always been indulging in character assassination of the respondents, and as a matter of fact, an earlier suit for damages filed by the respondents against the first appellant is pending in this Court.

3. It is stated that the respondents are protected by Article 21 of the Constitution of India to live peacefully without being defamed with false and vituperative articles without any proof therefor whatsoever. There are enough legal precedents available to prevent the appellants from printing and publishing such defamatory articles and if at all there was something relating to the respondents which required to be published, the appellants may be directed to verify with the respondents the veracity of the material received by them apropos of the activities of the respondents. It is stated that freedom of press does not mean that the appellants can pick and choose persons out of personal or political animosity, or monetary inducements with the sole idea of defaming them. It is further stated in paragraphs 20 and 21 of the plaint as follows:

> "20. The freedom of speech in Article 19(1) of the Constitution of India cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly without regard to another person's honour and reputation. The right guaranteed by the Constitution, it must be borne in mind, applies equally to every citizen. Every right correspondents to a duty to the other and is also to be judged. The right guaranteed is always a qualified one. Indeed, every right has got its own natural limitation. Holding a public position does not mean that one should be at the receiving end of attacks day-in-and-day-out nor it can be said that it is an appendage to that office.
>
> 21. It is not a question of mere ignorance about making vulgar criticisms and hurting abuses against the plaintiffs, but when the same is being ceaselessly done, beyond a reasonable period as a matter of right, the plaintiffs have no reason to keep quite as if they are

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helpless in the matter. Article 19 of the Constitution of India does not give a free hand, under the guise of free expression and freedom of press, the right to go on publishing defamatory matters and articles issue after issue without any basis whatsoever."

4. It is stated that the balance of convenience is not only in favour of the respondents, but it is also absolutely necessary to prevent such false publications which tend to bring disrepute to the respondents. It is stated that the loss of reputation of the respondents and the mental agony caused to them cannot be compensated by payment of damages alone. The respondents prayed in the suit for a restraint order against the appellants from publishing in future publications, articles, caricatures, news items, cartoons, etc., defamatory or derogatory in nature, in the Tamil bi-weekly "Nakkheeran" or in any special editions thereof or any publications of the appellants without prior verification with the respondents. The claim for damages has been quantified at Rs.2 Crores and one thousand. Along with the plaint an application (O.A.No.599 of 2003) for interim relief under Order 39 Rule 1 and 2 was also filed praying for issuance of an order of temporary injunction in the same terms. The respondents were granted a limited ad interim order restraining the appellants from publishing about private life of respondent No.1 without prior verification.

5. The appellants filed a counter affidavit to the O.A. and also prayed for vacation of the ad interim order. In the counter affidavit, it is stated that in a libel action it is obligatory on the plaintiff to state in the plaint the actual defamatory words (together with innuendo or defamatory meaning thereof where necessary) in specific terms. The respondents, however, have not set out in the body of the plaint the alleged defamatory remarks contained in the impugned publications and thereby, the appellants are denied the opportunity of knowing what was the nature of the imputations which are objected to and what was the meaning understood by the respondents of such imputations. It is stated that what is stated in the articles relating to the respondents is correct and the truth of the statement will be justified at the trial. It is averred that in the discharge of their journalistic duties, sometimes, some of the fair and accurate news item published in their magazine happen to be unpalatable to persons in public positions and such public persons react in anger and disappointment and the present suit is an outcome of such intolerance. It is stated that there was nothing defamatory in those articles and the same were published in good faith and for public good. It is averred that the claim of the respondents is not supported by any material to prove any of the publications in "Nakkheeran" as false or defamatory. Both the respondents are public persons and all their activities are matters of public interest, because the first respondent is the Chief Minister of Tamil Nadu and leader of one of the largest political parties in the State. She has subjected herself to many public controversies and she has been always in the media highlight. So, all her words

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and movements are matters of public interest, as the people of Tamil Nadu have a right to know about her activities. It is further stated that during the period 1991 to 1996, the appellants exposed many of the misdeeds of the respondents, A.I.A.D.M.K. Ministers and several officials and as a consequence, many criminal proceedings were initiated, which also ended in conviction. It is stated that verification of facts with the person concerned cannot be the criteria in deciding a matter as libel or defamatory. Law does not recognize verification of matter with the persons concerned. It is customary among journalists to verify the facts with the person concerned and publish the matter along with that person's version, but however, failure to do so is not unlawful. The plea of the respondents that the appellants publish articles against them without verification and, therefore, they must be prevented from publishing anything against the respondents is unsustainable in law. It is further stated that the appellants have always tried to verify the facts with respondents, but the respondents are beyond the reach of the reporters of the appellants. In fact, when one of the reporters of "Nakkheeran" visited the house of the then A.I.A.D.M.K. Supremo in Tuticorin District, he was invited inside the house and there, he was brutally attacked by A.I.A.D.M.K. men. In this background, it is stated that though the appellants very much want to verify the facts with the respondents, the reporters of "Nakkheeran Publications" will not get audience with the respondents. In any event, it is submitted that there is no provision in law to compel the appellants to verify the matter with any one as long as the matter is based on truth, touching upon public interest and is honestly believed to be true by the appellants.

6. The learned single Judge after hearing the learned counsel for the parties allowed the application of the respondents and granted a blanket injunction restraining the appellants from publishing in future publications articles, caricatures, news items, cartoons, etc., defamatory or derogatory in nature in the Tamil bi-weekly "Nakkheeran" or any special editions thereof or in any publications of the appellants till the disposal of the suit.

7. The learned single Judge was of the view that though the appellants are investigative journalists and the first respondent is in public life and therefore, in respect of the decisions taken by the first respondent, the appellants are entitled to make a criticism, the law would require that such criticism should be fair and should not exceed the bounds and limits. The learned single Judge referred to the issue of "Nakkheeran" dated 20.05.2003 containing the following article:

> "Even the people in Garden are also asking this question. There is a secret reason why 'J' is showing such consideration to her friend. Though in politics no big political party is presently having a tie-up with 'J', several diseases are having a tie-up in J's body. That is why, she is taking 4500 Mg. of tablets everyday. When the doctors have restricted her from taking certain

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things while she is taking the tablets, she is consuming those things without any restriction. It is only Sasikala who gives the tablets and other things to 'J'."

According to the learned single Judge, a very reading of the above article would not only reflect the character assassination of the respondents, but also indicates that the appellants have exceeded their limits.

8. The appellants, aggrieved by the aforesaid order of the learned single Judge, have preferred the present appeal.

9. We have heard Mr.P.T.Perumal, learned counsel appearing for the appellants and Mr.N.Jothi, learned counsel appearing for the respondents at length and have perused the records in the case.

10. Mr.P.T.Perumal, learned counsel for the appellants, has contended before us that the impugned injunction order is against the settled principles of law. No blanket injunction can be granted restraining the press from publishing anything of defamatory nature in the future. Such an order is clearly violative of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. Mr.Perumal has contended that the interim relief sought for was not to publish articles without prior verification with the respondents, whereas the learned single Judge has granted an order of injunction in a blanket manner, much more than what was prayed for by the respondents. Mr.Perumal has contended that the appellants have categorically affirmed and stood by what they had published by making such an averment in the counter affidavit. In such a situation, Mr.Perumal contends, that there could have been no action at all for any injunction, and the relief, if any, is by way of damages. Learned counsel has drawn our attention to the relief claimed in the plaint where damages have in fact been claimed. He has further contended that there is no defamation if the impugned articles are analysed and in any case once the appellants stand by them, truth would be available as a defense to defamation. Learned counsel has also submitted that the respondents are public figures and such public figures are subject to public gaze including in respect of their private life at times. He has contended that in law the position of public figures is different and in case of violation of right of their privacy the remedy is action for damages and not of preventive injunction which would amount to pre-censorship. He has also contended that the justification or claim of truth is an absolute defense and there is no right of privacy available to an individual in such a case. He has contended that the first respondent is the Chief Minister of a State and General Secretary of an important political party in the State and everything which happened within or outside of her household was of interest to public and thus the appellants have a right to comment and write about the same. He has submitted that insofar as public figures and politicians are concerned their lives are day-in-and-day-out brought under microscope and commented upon. There cannot be segregation of private life of such public figures from their public life, as both are intertwined. It is, therefore,

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contended that by the very nature of being a public figure such person's life is entitled to be scrutinized, whether in respect of their public function or their private life. As regards the article dated 20.05.2003 referred to in the order of the learned single Judge learned counsel has contended that the imputation contained in that article has not been set out in the plaint together with the alleged innuendo or defamatory meaning thereof, and therefore, no relief can be based on the said article. In any event, according to Mr.Perumal the Court can at best direct the publishers not to repeat publishing the said article, but a blanket injunction restraining the publishers from publishing any article in future runs counter to the fundamental right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India. Mr.Perumal relied upon a number of decisions of the Supreme Court as well as High Courts and also decisions by American and English Courts to which we shall shortly refer to.

11. Mr.N.Jothi, learned counsel for the respondents, on the other hand, made submissions for sustaining the impugned interim order of the learned single judge and contended that the reputation of an individual and his/her right to privacy are both protected and it is apparent from the impugned articles that such rights of the respondents were sought to be violated by the appellants with impunity. In such a situation, Mr.Jothi contended that the remedy was available both by way of damages and by way of injunction. He contended that what is implicit in the article dated 20.05.2003 is that the second respondent is giving liquor to first respondent although she had been forbidden by the doctors from taking any such thing. According to him the article is malicious and beyond all limits of decency and consequently, no fault can be found with the order of injunction. Mr.Jothi submitted that there were two competing interests which had to be balanced i.e., right of the press to write and publish, and right of an individual against invasion of his/her privacy and threat of defamation. Eventhough, the appellants were standing by what they had written, the truth and veracity of the same is yet to be established. On the other hand, the right of the individual for privacy is sacrosanct. Mr.Jothi contends that no one has a right to publish anything concerning personal private matters without consent – whether truthful or otherwise, whether laudatory or critical. He contends that since admittedly no consent of the respondents had been taken by the appellants to write about their private life, this was a clear case of invasion of privacy of the respondents, and in such a situation, it is not necessary that one must wait for the publication and then claim damages, but a preventive action can be taken so that the respondents' right to privacy is not violated. He submitted that the courts have always protested against the notion that they ought to allow a wrong to continue simply because the wrongdoer is able and willing to pay for the injury he may inflict. The right to freedom of speech and expression, he contends, cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to the other person's honour or reputation. He contends that the plea of justification would be

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available where truth was pleaded and it was in public interest. In case of a public figure, he contends, that it may apply to performance of public duties by the public figures and it does not give a licence to go into the private life of such public figures. In the alternative, it is the submission of the learned counsel that having regard to the fact that the appellants were indulging in character assassination the least they must be asked to do is to seek prior verification from the respondents before publishing any articles and also publish the denial, if any, of the respondents. Mr.Jyoti also referred to a number of decisions of the Supreme Court and High Courts.

12. We have duly considered the elaborate submissions and a large number of decisions cited at the bar by the learned counsel for the parties. The matter was heard in depth, as the decision in this case would have direct bearing on the claims of right of privacy by public figures as against the right of the press to publish and write about such public figures.

13. We may mention at this stage that we have been taken through all 24 impugned articles published in the appellants' magazine Nakkheeran. At the outset we may mention that none of the articles other than the article dated 20.05.2003, referred to in the order of the learned single Judge, and the article published on 06.06.2003 can be said to be relating to the personal life of the first respondent. The article dated 06.06.2003 is about the first respondent taking advice from an astrologer in respect of certain criminal case pending against her. The rest of the articles are about her actions pertaining to official and public function. In some of the articles it is alleged that the first respondent is behaving in a dictatorial manner and using police to suppress dissent and had been likened with Hitler. In some there are allegations of misdeeds and misdemeanor in official duties. Out of 24 articles the name of the second respondent appears only in 5 articles. None of the articles/imputations are reproduced in the plaint. In paragraph – 9 of the plaint it is merely stated that the respondents are restricting the description of such defamatory articles since they are fully indicated in Document No.1 filed along with the plaint. Document No.1 is compilation of the 24 publications which are said to be defamatory. It is nowhere stated in the plaint that in what way the articles and the materials in the articles are defamatory and if they are not per se defamatory the innuendo implied in the articles is also not set out. It is well settled that in a libel action defamatory words must be set out in the plaint where the words are per se or prima facie defamatory, and where the defamatory sense is not apparent on the face of the words, the defamatory meaning as it is technically known in law, the innuendo must also to be set out in a clear and specific terms. In the absence of these necessary averments the plaint would be liable to be rejected on the ground that it does not disclose any cause of action. (See Brijlal Prasad Vs. Mahant Lal Das, AIR 1940 Nagpur 125, Krishna Rao Vs. Radhakisan, AIR 1956

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Nagpur 264, W.Hay Vs. Ashwini Kumar, AIR 1958 Calcutta 269, Purushottam Lal Vs. Prem Shankar, AIR 1966 Allahabad 377)

14. With these preliminary observations, we may now proceed to deal with the appellants' submissions based on the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Though the Indian Constitution does not use the expression "freedom of press" in Article 19, but it is included as one of the guarantees in Article 19(1)(a). The law on this aspect has been adverted to in the decision of the Supreme Court in Indian Express Newspapers (Pvt.) Ltd. Vs. Union of India (1985 (1) SCC 641) where Venkataramaiah, J. referred to the importance of freedom of press in a democratic society and the role of courts. The freedom of press, as noted by Venkataramaiah, J., is one of the items around which the greatest and bitterest constitutional struggles have been waged in all countries where liberal constitutions prevail. Article 19 of the Universal Declaration of Human Rights, 1948 declares the freedom of press and so does Article 19 of the International Covenant on Civil and Political Rights, 1966. Article 10 of the European Convention on Human Rights, provides as follows: -

> "Article 10. (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The First Amendment to the Constitution of the U.S.A provides as follows: -

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" Amendment 1. Congress shall make no law respecting all establishment or religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

15. Our Constitution is not absolute with respect to the freedom of speech and expression, as enshrined by the First Amendment to the American Constitution. But this right is subject to reasonable restrictions on grounds set out in Article 19(2) of the Constitution. Reasonable limitation can be put in the interest of sovereignty and integrity of India, the secrecy of the State, friendly relationship with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. The effect of Article 19 on the freedom of press, was analysed in the decision of the Supreme Court in Indian Express Newspapers (Pvt.) Ltd. Vs. Union of India (1959 SCR 12) where Bhagwati, J. after referring to the Supreme Court's earlier decision in Romesh Thapar Vs. State of Madras (AIR 1950 SC 124) and Brij Bhushan Vs. State of Delhi (AIR 1950 SC 129) expressed his view that these were the only two decisions which evolved the interpretation of Article 19(1)(a) of the Constitution, and they only laid down that the freedom of speech and expression included freedom of propagation of ideas which freedom was ensured by the freedom of circulation and that the liberty of the press consisted in allowing no previous restraint upon publication. Referring to the fact that there is a considerable body of authority to be found in the decisions of the Supreme Court of America bearing on this concept of freedom of speech and expression, Bhagwati, J. observed that it was trite knowledge that the fundamental right to the freedom of speech and expression enshrined in our constitution was based on the provisions in the First Amendment to the Constitution of USA, and, hence, it would be legitimate and proper to refer to those decisions of the Supreme Court of USA, in order to appreciate the true nature, scope and extent of this right, in spite of the warning administered by the Court against the use of American and other cases, in State of Trivancore, Cochin Vs. Bombay Co. Ltd. (AIR 1952 SC 356) and State of Bombay Vs. R.M.D.Chamarbaughwala (AIR 1957 SC 699).

16. The U.S. Supreme Court in New York Times Co. v. Sullivan, 376 US 254; Garrison v. Lousiana, 379 US 64; Curtis Publishing Co. v. Butts, 388 US 130, Time, Inc. v. Hill, 385 US 374 and like cases has laid down that the defense of truth is constitutionally required where the subject of the publication is a public official or public figure. What is more, the defamed public official or public figure must prove not only that the publication is false, but that it was knowingly so or was circulated with reckless disregard for its truth or falsity. Similarly where the interest at issue is privacy rather than reputation and the right claimed is to be free from the publication of false or misleading information

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about one's affairs, the target of the publication must prove knowing or reckless falsehood where the materials published, although assertedly private, are "matters of public interest". In New York Times Co. v. Sullivan, 376 US 254, Brandeis, J observed: -

> " A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions – and to do so on pain of libel judgments virtually unlimited in amount – leads to a comparable "self-censorship". Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense an adequate safeguard have recognised the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars. See, e.g., Post Publishing Co. V. Hallam, 59 F.530, 540 (C.A. 6th Cir.1893); see also Noel, Defamation of Public officers and Candidates, 49 Col.L.Rev. 875, 892 (1949). Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone". Speiser V. Randall, supra, 357 U.S., at 526. The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.
>
> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" – that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

17. It will be useful also to refer to the observations of Justice Brennan in Time, Inc. v. Hill, 385 US 374

> " The guarantees for speech and press are not the preserve of political expression or comment upon public affairs, essential as those are to healthy government. One need only pick up any newspaper or magazine to comprehend the vast range of published matter which exposes persons to public view, both private citizens and public officials. Exposure of the self to others is varying degrees is a concomitant of

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life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press. "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

As James Madison said, "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press" 4 Elliot's Debates on the Federal Constitution 571 (1876 ed.). We create a grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in news articles with a person's name, picture or portrait, particularly as related to non-defamatory matter. Even negligence would be a most elusive standard, especially when the content of the speech itself affords no warning of prospective harm to another through falsity. A negligence test would place on the press the intolerable burden of guessing how a jury might assess the reasonableness of steps taken by it to verify the accuracy of every reference to a name, picture or portrait."

18. In Cox Broadcasting Corporation v. Cohn, 420 US 469, the identity of a 17 year old deceased rape victim was obtained by a television newsman from official court records open to the public. In response to television newscasts in which the victim was identified by name, the father of the victim brought an action against the newsman and the television station in the Superior Court of Fulton County, Georgia, for invasion of privacy, grounding his cause of action on a Georgia criminal statute making it a misdemeanor to publish or broadcast the name or identity of any rape victim. In an opinion by White, J expressing the view of six members of the Court, it was held that " protection of freedom of press under the First and Fourteenth Amendments barred the state from making the defendant's television broadcasts the basis of civil liability when there was no contention that the rape victim's name had been obtained in an improper fashion or that it was not on an official court document open to public inspection".

19. In Derbyshire County Council v. Times Newspaper Limited, 1993 (1) All.ER page 1011), it was held by House of Lords that under common law a local authority did not have the right to maintain an action for damages for defamation as it would be contrary to the public interest for the organs of the government,

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whether central or local, to have that right. Not only was there no public interest favouring the right of government organs to sue libel, but it was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech. It was held that the propositions endorsed by the US Supreme Court in New York Times Co. V. Sullivan (supra) though related directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them are no less valid in this country. What has been described as the "Chilling Effect" induced by the threat of civil action for libel is very important.

20. In Hector v. A-G of Antigua and Barbuda, (1990) 2 All ER, 103 the Judicial Committee of the Privy Council held that a statutory provision which made the printing or distribution of any false statement likely to undermine public confidence in the conduct of public affairs a criminal offence contravened the provisions of the constitution protecting freedom of speech. Lord Bridge of Harwich observed: -

> "In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism leveled at those who have the conduct of public affairs by their political opponents is to undermine public confidence in their stewardship and to persuade the electorate that the opponents would make a better job of if than those presently holding office. In the light of these considerations their Lordships cannot help viewing a statutory provision which criminalizes statements likely to undermine public confidence in the conduct of public affairs with the utmost suspicion."

21. We may now refer to the judgment of the Supreme Court in celebrated case of R. Rajagopal @ R.R. Gopal vs. State of Tamil Nadu [(1994) 6 S.C.C. 632]. The said case dealt with the right of privacy of citizens of this country and the parameters of the right of the press to criticize and comment on acts and conduct of public officials. The case related to the alleged autobiography of Auto Shankar who was convicted and sentenced to death for committing six murders. In the autobiography, he had commented on his contact and relations with various police officials. It was the stand of the police that the autobiography was not authored by Auto Shankar. It was stated that neither Auto Shankar nor his wife were made parties before the Supreme Court in the writ petition filed under Article

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32 of the Constitution. The right of privacy of citizens was dealt with by the Supreme Court in paragraph 9 in the following terms: -

> " The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin — (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising — or non-advertising — purposes or for that matter, his life story is written — whether laudatory or otherwise — and published without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21……
>
> There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.
>
> The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize

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> as a fundamental right, we do not think that the right is absolute."

The Supreme Court, thereafter, proceeded to refer to various decisions of the Indian Courts starting with the first decision of the Supreme Court in Kharak Singh vs. State of Uttar Pradesh [A.I.R. 1963 S.C. 1295], which was subsequently elaborated in Gobind vs. State of Madhya Pradesh [(1975) 2 S.C.C. 148]. The right to privacy as enunciated by the Courts of the United States and England were also discussed in great depth. The Supreme Court was of the view that the principles enunciated in the various judgments referred to above were applicable to public figures and they often played a crucial role in regulating an orderly society and the citizens had a legitimate and substantial interest in the conduct of such persons. Thus, the Supreme Court was of the opinion that the freedom of Press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events. The Supreme Court felt that a proper balance of the freedom of press as well as the right of privacy and defamation has to be struck in a democratic way of life as contemplated by our Constitution. The Supreme Court concluded that the State or its officials have no authority in law to impose a prior restraint upon publication of materials, defamatory of the State or of its officials. The Supreme Court quoted, with approval, the observations in New York Times vs. United States to the effect that any system of prior restraints of freedom of expression comes to this Court bearing a heavy presumption against its constitutional validity and that in such cases, the Government "carries a heavy burden of showing justification for the imposition of such a restraint." The Supreme Court thus held that the remedy of the public figure would arise only after the publication is made and would be governed by the principles indicated in the judgment and that there was no law under which they could prevent the publication of a material on the ground of such material being likely to be defamatory of them. Even in that case, the remedy was only after the publication. In paragraph 26 of the report in R. Rajagopal's case, the broad principles summarized by the Supreme Court as under :

> " (1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a

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person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the

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Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

22. In Kartar Singh v. State of Punjab, AIR 1956 SC 541, Bhagwati, J. (as he then was) in paragraph-12 observed as follows:-

"These slogans were certainly defamatory of the Transport Minister and the Chief Minister of the Punjab Government but the redress of the grievance was personal to these individuals and the State authorities could not take the cudgels on their behalf by having recourse to S.9 of the Act unless and until the defamation of these individuals was prejudicial to the security of the State or the maintenance of public order.

So, far as these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time." (per Cockburn,C.J in Seymour v. Butterworth' , (1862) 3 F&F 372 (376,377(a) and see the dicta of the Judges in R. v. Sir R.Carden (1879) 5 QBD).

(B) Whoever fills a public position renders himself open thereto. He must accept

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appendage to this office". (Per Bramwell B., In Kelly v. Sherlock, (1866) 1 QB 686 (689)

(C) Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same."

23. Thus law is well settled that so far as Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them. In the case of public officials, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties and this is so even where the publication is based upon the facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. In respect of private matters, none can publish such matters without his consent, but the position would be different if he voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

24. In the instant case, the appellants have taken a plea of justification and the effect of such justification plea has been considered in several judicial pronouncements. The first of such cases is Fraser vs. Evans [(1969) 1 All E.R. 8], where Lord Denning has observed :

" The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says that he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years since Bonnard v. Perryman (1). The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge; but a better reason is the importance in the public interest that the truth should be out."

25. The next is the decision in Harakas vs. Baltic Mercantile and Shipping Exchange Ltd. [(1982) 2 All E.R. 701], again Lord Denning observed :

" This cases raises a matter of principle which must be observed. This Court never grants an injunction in respect of libel when it is said by the defendant that the words are true and that he is going to justify them. So also, when an occasion is protected by qualified privilege, this Court never grants an injunction to restrain a slander or libel, to prevent a person from

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exercising that privilege, unless it is shown that what the defendant proposes to say is known by him to be untrue so that it is clearly malicious. So long as he proposes to say that he honestly believes to be true, no injunction should be granted against him. That was made clear in Quartz Hill Consolidated Gold Mining Co. v. Beal, (1882) 20 Ch I) 501."

26. The same view has been adopted by the Division Bench of the Bombay High Court in Appeal No.464 of 1989 from Notice of Motion No.48 of 1989 in Suit No.3907 of 1988 in the case of Dr. Yashwant Trivedi vs. Indian Express Newspapers (Bombay) Pvt. Ltd. decided on 29.6.1989 and the ratio in the case of Harakas vs. Baltic Mercantile and Shipping Exchange Ltd. (supra) and in particular, the portion quoted above has been approved. The Division Bench also observed :

" The crux of the matter is that when in a libel action at the interlocutory stage the defendant raises plea of justification and, as in this case, mentions evidence by which he might substantiate his case, the Court is unlikely to grant an interlocutory injunction in favour of the plaintiff to restrain further publication of the alleged libel."

In the said judgment, the passage appearing in the Treatise on Libel and Slander by Gatley Eighth Edition, has been cited with approval, which is also quoted hereinbelow :

" 1574. Justification: When the defendant swears that he will be able to justify the words – unless the Court is satisfied that he will not be able to do so. The validity of a justification, if pleaded, is eminently a matter to be determined by a verdict of a jury. When once a defendant says that he is going to justify the words complained of, there is an end of the case so far as an interim injunction is concerned, although in a proper case it may be that the Court will intervene on the ground of breach of confidence"

27. Finally we may refer to the decision of the Supreme Court in S.Rangarajan v. P.Jagajivan Ram, (1989) 2 SCC 574 where the Court held that the freedom of speech and expression should not be suppressed unless the situation created by allowing the freedom are pressing and the community interest is endangered, and it is not simply a case of balancing of two interests as if they are of equal weight. In this connection, the observations in paragraphs 41 to 45 of the said judgment are relevant and accordingly are reproduced below: -

"41. "When men differ in opinion, both sides ought equally to have the advantage of being heard by the public." (Benjamin Franklin). If one is allowed to say that policy of the government is good, another is with equal freedom entitled to say that it is bad. If one

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is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponent not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue.

42. Alexander Meiklejohn perhaps the foremost American philosopher of freedom of expression, in his wise little study neatly explains:

"When men govern themselves, it is they — and no one else — who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones unfair as well as fair, dangerous as well as safe, unAmerican as well... American. ... If then on any occasion in the United States it is allowable, in that situation, to say that the Constitution is a good document it is equally allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. If it may be said that American political institutions are superior to those of England or Russia or Germany, it may with equal freedom, be said that those of England or Russia or Germany are superior to ours. These conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant.... To be afraid of ideas, any idea, is to be unfit for self-government."

He argued, if we may say so correctly, that the guarantees of freedom of speech and of the press are measures adopted by the people as the ultimate rulers in order to retain control over the government, the people's legislative and executive agents.

43. Brandies, J., in Whitney v. California propounded probably the most attractive free speech theory :

"... that the greatest menace to freedom is an inert people ; that public discussion is a

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political duty ;. .. It is hazardous to discourage thought, hope and imagination ; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies ; and that the fitting remedy for evil counsels is good ones."

44. What Archibald Cox said in his article though on "First Amendment" is equally relevant here:

"Some propositions seem true or false beyond rational debate. Some false and harmful, political and religious doctrine gain wide public acceptance. Adolf Hitler's brutal theory of a "master race" is sufficient example. We tolerate such foolish and sometimes dangerous appeals not because they may prove true but because freedom of speech is indivisible. The liberty cannot be denied to some ideas and saved for others. The reason is plain enough : no man, no committee, and surely no government, has the infinite wisdom and disinterestedness accurately and unselfishly to separate what is true from what is debatable, and both from what is false. To license one to impose his truth upon dissenters is to give the same licence to all others who have, but fear to lose, power. The judgment that the risks of suppression are greater than the harm done by bad ideas rests upon faith in the ultimate good sense and decency of free people.

45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

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28. The right to publish and the freedom of press as enshrined in Article 19(1)(a) of the Constitution of India are sacrosanct. The only parameters of restriction are provided in Article 19(2) of the Constitution. As observed by Mudholkar, J. in Sakal Papers (P) Ltd. Vs. Union of India (AIR 1962 SC 305) the courts must be ever vigilant in guarding perhaps this most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved. The interim order granted by the learned single Judge is a blanket injunction. The order virtually amounts to a gag order or censorship of press. Such censorship cannot be countenanced in the scheme of our constitutional framework. Even assuming that the articles published by the appellants amount to character assassination of the respondents, there is no justification for granting a blanket injunction restraining the appellants from publishing any articles, in future. It would not be appropriate for us to examine the articles at this stage on the touchstone of defamation, but what we do observe is that they are not of such a nature warranting a restraint order, especially when the appellants are willing to face the consequences in a trial in case the same are held to be defamatory, and the plea of the appellants of truth is yet to be analysed by the Court.

29. The fundamental right of freedom of speech is involved in these proceedings and not merely the right of liberty of the press. If this action can be maintained against a newspaper, it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of the government. In a free democratic society those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. As observed in Kartar Singh's Case (supra) the persons holding public offices must not be thin-skinned with reference to the comments made on them and even where they know that the observations are undeserved and unjust, they must bear with them and submit to be misunderstood for a time. At times public figures have to ignore vulgar criticisms and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same. In the instant case, the respondents have already chosen to claim damages and their claim is yet to be adjudicated upon. They will have remedy if the statements are held to be defamatory or false and actuated by malice or personal animosity.

30. As observed in R.Rajagopal's Case (supra) the right to privacy has two aspects which are but two faces of the same coin. First the general law of privacy which offers a tort action for damages resulting from an unlawful invasion of privacy and

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secondly, the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion. Though the right to privacy can be characterized as a fundamental right, as held in R.Rajagopal's Case it is not an absolute right. In Time, Inc Vs. Hill (385 U.S.374) it was pointed out that in the case of public officials, insofar as their official function is involved, they are substantially without a right to privacy and factual error and content defamatory of official reputation or both, are insufficient for the award of damages for false statements unless actual malice – knowledge that the statements are false or reckless disregard of the truth is alleged and proved. In a democratic set up a close and microscopic examination of private lives of public men is the natural consequence of holding of public offices. What is good for a private citizen who does not come within the public gaze may not be true of a person holding public office. What a person holding public office does within the four walls of his house does not totally remain a private matter. We agree with Mr.Jothi that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members and they must be permitted to live and lead their life in peace. But the public gaze cannot be avoided which is necessary corollary of their holding public offices.

31. We are also unable to accept the submission advanced by Mr.Jothi that the appellants should be asked to seek prior verification from the respondents before publishing any articles and publish the denial, if any, of the respondents. According to Mr.Jothi rule of prior verification is laid down in R.Rajagopal's Case (supra). We are afraid that the submission of the learned counsel is based on total mis-interpretation of the observations of the Supreme Court. The Supreme Court has not laid down that the prior verification of the facts is must in all such cases. All that the Supreme Court indicated is that the proof that the member of the press or media acted after a reasonable verification of the facts would be sufficient. However, at the same time, it must be noted that the Supreme Court in R.Rajagopal's Case has clearly held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters, and none can publish anything in reference to the above matters without his/her consent – whether laudatory or critical. Therefore, if an article is purely relating to the personal life of a public official, it would be necessary for the member of the press or media to publish such article only after a reasonable verification of the facts. The position may, however, be different if a person voluntarily thrust himself or herself into a controversy or voluntarily invites or raises a controversy. In the circumstances, we direct the appellants that whenever they propose to publish any article purely concerning personal life of the first respondent or the second respondent or both, the appellants shall forward their queries and/or the gist of the proposed article, as the case may be, to the fax number

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furnished by the learned counsel appearing for the respondents. The first respondent or the second respondent or both, as the case may be, shall respond to the queries of the appellants in relation to their proposed article to the fax number of the appellants. However, if there is no response to the queries either from the first respondent or the second respondent within 36 hours from receiving such queries, the appellants will be entitled to proceed to publish the proposed article in their bi-weekly. It is true that the press cannot be compelled to also publish the version of the official, about whom the article is written, with reference to the article published against him/her. We, however, feel that it is expected of any responsible member of the press to also indicate the version of the official concerned in their proposed article.

32. With the above observations, we vacate the order of injunction passed by the learned single Judge. The O.S.A. is accordingly disposed of with no order as to costs. Consequently, C.M.P.No.4534 of 2006 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

1 cc to Mr.P.T.Perumal, Advocate, Sr. 17590

O.S.A.No.86 of 2006

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